

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court’s order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 583 of 2006

Raghav Chandra

Vs

State and others.

Approved for reporting.

~~Not approved for reporting~~

Date of decision 26.06.2006.

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT
NAINITAL
WRIT PETITION NO. 583 (MS) OF 2006

Raghav Chandra,
S/o Sri Mahesh Chandra,
R/o Mohalla Sahukara,
Pilibhit City. Petitioner.

Versus

1. State of Uttaranchal, through Secretary Revenue.
 2. Gaon Sabha Village-Jaitpur, Ghoshi, Tehsil Kashipur,
District Udham Singh Nagar.
 3. Addl. Commissioner (Judicial), Kumaon Region
(Nainital).
 4. Board of Revenue, U.P. Allahabad now Chief Revenue
Commissioner Uttaranchal.
 5. Satnam Singh, S/o Sri Deedar Singh, R/o Village
Jaitpur Ghoshi, Tehsil Kashipur, District-Udham Singh
Nagar.
 6. Commissioner, Kumaon Division, Nainital.
- Respondents.

&

WRIT PETITION NO.584 OF 2006

Raghav Chandra,
S/o Sri Mahesh Chandra,
R/o Mohalla Sahukara,
Pilibhit City. Petitioner.

Versus

1. State of Uttaranchal, through Secretary Revenue.

2. Gaon Sabha Village-Jaitpur, Ghoshi, Tehsil Kashipur, District Udham Singh Nagar.
3. Addl. Commissioner (Judicial), Kumaon Region (Nainital).
4. Board of Revenue, U.P. Allahabad now Chief Revenue Commissioner Uttaranchal.
5. Laskar Singh, S/o Sri Chanan Singh, R/o Village Jaitpur Ghoshi, Tehsil Kashipur, District-Udham Singh Nagar.
6. Commissioner, Kumaon Division, Nainital.

.....Respondents.

&

WRIT PETITION NO.585(MS) OF 2006

Raghav Chandra,
S/o Sri Mahesh Chandra,
R/o Mohalla Sahukara,
Pilibhit City.

.....Petitioner.

Versus

1. State of Uttaranchal, through Secretary Revenue.
2. Gaon Sabha Village-Jaitpur, Ghoshi, Tehsil Kashipur, District Udham Singh Nagar.
3. Addl. Commissioner (Judicial), Kumaon Region (Nainital).
4. Board of Revenue, U.P. Allahabad now Chief Revenue Commissioner Uttaranchal.
5. Sadhu Singh, S/o Sri Jageer Singh, R/o Village Saandkhera, Tehsil Kashipur, District-Udham Singh Nagar.
6. Commissioner, Kumaon Division, Nainital.

.....Respondents.

&

WRIT PETITION NO.586 (MS) OF 2006

Mareshh Chandra,

S/o Sri Late Sri Krishna Chandra,

R/o Mohalla Sahukara,

Pilibhit City.

.....Petitioner.

Versus

1. State of Uttaranchal, through Secretary Revenue.
2. Gaon Sabha Village-Jaitpur, Ghoshi, Tehsil Kashipur, District Udham Singh Nagar.
3. Addl. Commissioner (Judicial), Kumaon Region (Nainital).
4. Board of Revenue, U.P. Allahabad now Chief Revenue Commissioner Uttaranchal.
5. Laskar Singh, S/o Sri Chanan Singh, R/o Village Jaitpur Ghoshi, Tehsil Kashipur, District-Udham Singh Nagar.
6. Commissioner, Kumaon Division, Nainital.

.....Respondents.

&

WRIT PETITION NO. 587 (MS) OF 2006

Mareshh Chandra,

S/o Sri Krishna Chandra,

R/o Mohalla Sahukara,

Pilibhit City.

.....Petitioner.

Versus

1. State of Uttaranchal, through Secretary Revenue.
2. Gaon Sabha Village-Jaitpur, Ghoshi, Tehsil Kashipur, District Udham Singh Nagar.
3. Addl. Commissioner (Judicial), Kumaon Region (Nainital).

4. Board of Revenue, U.P. Allahabad now Chief Revenue Commissioner Uttaranchal.
5. Sadhu Singh, S/o Sri Jageer Singh, R/o Village Saandkhera,, Tehsil Kashipur, District-Udham Singh Nagar.
6. Commissioner, Kumaon Division, Nainital.

.....Respondents.

&

WRIT PETITION NO.588 (MS) OF 2006

Vishwanath Chandra,
S/o Sri Harish Chandra,
R/o Mohalla Sahukara,
Pilibhit City.

.....Petitioner.

Versus

1. State of Uttaranchal, through Secretary Revenue.
2. Gaon Sabha Village-Jaitpur, Ghoshi, Tehsil Kashipur, District Udham Singh Nagar.
3. Addl. Commissioner (Judicial), Kumaon Region (Nainital).
4. Board of Revenue, U.P. Allahabad now Chief Revenue Commissioner Uttaranchal.
5. Boor Singh, S/o Sri Vichant Singh, R/o Village Jaitpur Ghoshi, Tehsil Kashipur, District-Udham Singh Nagar.
6. Commissioner, Kumaon Division, Nainital.

.....Respondents.

&

WRIT PETITION NO.589(MS) OF 2006

S.K. Jain,
S/o Sri Babu Lal Jain ,
R/o 88, Skipper Corner,
Nehru Place

New Delhi.

.....Petitioner.

Versus

1. State of Uttaranchal, through Secretary Revenue.
2. Gaon Sabha Village-Jaitpur, Ghoshi, Tehsil Kashipur, District Udham Singh Nagar.
3. Addl. Commissioner (Judicial), Kumaon Region (Nainital).
4. Board of Revenue, U.P. Allahabad now Chief Revenue Commissioner Uttaranchal.
5. Yashpal Singh, S/o Sri Ratan Singh, R/o Village Jaitpur Ghoshi, Tehsil Kashipur, District-Udham Singh Nagar.
6. Commissioner, Kumaon Division, Nainital.

.....Respondents.

&

WRIT PETITION NO.590 (MS) OF 2006

Subodh Chandra,

S/o Sri Vishwanath Chandra,

R/o Mohalla Sahukara,

Pilibhit City.

.....Petitioner.

Versus

1. State of Uttaranchal, through Secretary Revenue.
2. Gaon Sabha Village-Jaitpur, Ghoshi, Tehsil Kashipur, District Udham Singh Nagar.
3. Addl. Commissioner (Judicial), Kumaon Region (Nainital).
4. Board of Revenue, U.P. Allahabad now Chief Revenue Commissioner Uttaranchal.
5. Lakhar Singh, S/o Sri Dhanpal Singh, R/o Village Jaitpur Ghoshi, Tehsil Kashipur, District-Udham Singh Nagar.

6. Commissioner, Kumaon Division, Nainital.

.....Respondents.

Dated: 26.06.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Sharad Sharma & Sri G.K. Verma, Advocate for the petitioners and Standing Counsel for the respondents no. 1, 3, 4 and 6.

By the present writ petition, the petitioners have prayed for a writ of certiorari quashing the order dated 11.11.1991 passed by the respondent no.4/Board of Revenue, U.P. Allahabad (now known as Revenue Commissioner Uttaranchal) as well as the order dated 16.12.1986 passed by the Addl. Commissioner (Judicial), Kumaon Region, Nainital.

Briefly stated, the respondent no. 5 has preferred ten suits being Suit No.22/62 of 1981 Satnam Singh Vs. State of U.P., 22/51 of 1981-82 Lashkar Singh Vs. State of U.P. & another, Suit No. 22/69 of 1981-82 Sadhu Singh Vs. State of U.P. and others, Suit No. 22/52 of 1981-82 Laskar Singh Vs. State of U.P., Suit No. 22/68 of 1981-82 Sri Sadhu Singh Vs. State of U.P. and another, Suit No. 22/63 of 1981-82 Sri Burh Singh Vs. State of U.P. and another and Suit No. 22/53 (22/126) of 1981-82 Sri Yashpal Vs. State of U.P.

The trial court vide order dated 15th November, 1984 has dismissed all the suits. Against the said order, respondent no. 5 preferred appeals being Appeal No. 58 of 1984-85, Appeal No. 59 of 1984-85, 64 of 1984-85, 60 of 1984-85, 66 of 1984-85, 63 of 1984-85 and 65 of 1984-85. A perusal of the order dated 21st October, 1988 shows that the ten appeals were restrained for disposal by the Commissioner. The order is quoted below:-

“मेरे आदेश दिनांक 22.8.86 के अन्तर्गत 10 निम्नलिखित अपीलें अतिरिक्त आयुक्त (न्याय) में निस्तारण हेतु स्थानान्तरण की गई थी। संबंधित अपीलकर्तागण द्वारा मेरे समक्ष प्रार्थनागण प्रस्तुत किये गये हैं कि उक्त अपीलों की शीघ्र सुनवाई एवं निस्तारण हेतु इस न्यायालय में निपटाया/निरस्त की जाय। अपर आयुक्त (न्याय) के पद पर अभी किसी अधिकारी की नियुक्ति नहीं हुई है। अतः न्यायहित में 10 अपीलों अपर आयुक्त “न्याय” के न्यायालय से वापस प्राप्त की जाती हैं।”

On 14th August, 1989, the order was passed that all the ten appeals were heard by the Commissioner and date was fixed for hearing 29.08.1989 and by an ex parte order dated 16.12.1986 the appeal was dismissed. The order being ex parte, the application filed by the petitioner under Order 41 rule 21 C.P.C. were allowed and a date was fixed i.e. 29.08.1989 for disposal of the appeals.

Respondent no. 5 preferred ten revisions before the Board of Revenue being Revisions No. 56 to 60 and 64 to 68. The revisional Court vide order dated 11.11.1991 set aside the order passed by the Commissioner and the revisions were allowed. Petitioners have preferred two writ petitions being Writ Petition No. 2824 of 2001 (ms) and 4409 of 2001 (ms) before this Hon'ble Court under Article 226 of the Constitution of India. The writ petitions were allowed on 20.09.2005. The operative portion of the order is quoted below:-

“The matter is sent back to the Additional Commissioner, who shall decide the matter within a period of four months on merits. This order shall govern two Suits i.e. Suit No. 22/67 of 1981-82 against which Appeal No. 61 of 1984-85 was filed and after that revision was preferred being Revision No. 59 of 1988-89 and another Suit No. 22/66 of 1981-82 against which Appeal No. 63 of 1985-86 was filed and thereafter revision no. 64 of 1988-89 was preferred.

Consequently, both the writ petitions are allowed. No order as to costs.”

The order passed in the Writ Petition was challenged before the Apex Court in SLP No. 3269 of 2006. Following order was passed on 28.04.2006:-

“Delay condoned.

We see no reason to interfere.

The Special Leave Petition is dismissed.”

In view of the above orders, the order passed by this Court in Writ Petitions No. 2824 of 2001 and 4409 of 2001 has been confirmed by the Hon’ble Apex Court. Petitioners have also preferred a review application stating therein that in fact four more court fees were paid while filing the aforesaid writ petitions, but due to inadvertent mistake, the same could not be pointed out by the petitioners. Later on the petitioners have also filed a separate writ petitions challenging the orders passed by the Board of Revenue by which he has interfered with the exercise of jurisdiction while setting aside the order passed by the Commissioner directing the appeals to be heard on merits.

A perusal of the applications under Order 41 Rule 21 C.P.C. shows that the petitioners have alleged themselves to have not been informed regarding the hearing of the appeals and hence the appeals were heard ex parte. In paragraph 5 of the applications, it has been mentioned that the petitioners have not engaged the counsels and the signatures were forged on the Vakalatnama and as such the decree was passed ex parte against the petitioners. It has been stated that for the first time, they came to know on 1st July, 1998 and that the judgment and decree has been passed against the petitioners, when order of another decree came to the knowledge of the petitioners. The Commissioner was fully satisfied with the cause of non-appearance before the trial Court and hence allowed the applications and has directed for hearing of the matter on merits. While allowing the writ petitions, I have

observed that the revisional Court should not have interfered with the order exercising the jurisdiction under Section 115 of the Code of Civil Procedure as well as 333 of the U.P. Z.A. & L.R. Act against the order of restoration.

Sri M.C. Pandey, counsel for the respondent has submitted that since petitioners have confined themselves for the two suits alone, the present order and the order which has already been upheld by the Apex Court cannot be relied upon while directing the other suits to be disposed of on the same line.

A perusal of the order shows that from the beginning, it was in the mind of the petitioners that against ten suits ten appeals have been decided ex parte. The ex parte orders have been recalled under Order 41 Rule 21 C.P.C. for disposal of ten appeals. Board of Revenue was also ten revisions and the present writ petition, therefore, reiterates to the eight writ petitions, two of them have already become final up to the Apex Court.

Coming to the factual controversy involved in the present writ petitions, admittedly, in the writ petition, the petitioners have already paid six court fees and only four have left and the ground which has been shown by the petitioner that the suit No. 22/67, 22/51, 22/69 and 22/62 was confined against Raghav Chandra alone filed by the respondent no. 5 and the rest of the suits i.e. 22/66 was against Harish Chandra, 22/58 was against Sri Subodh Chandra, 22/51 against Smt. Prakash Wati and 22/53 against Vishwa Nath and two other suits 22/52 and 22/68 against Sri Mahesh Chandra, therefore, taking into consideration, four separate suits against four different persons i.e. Harish Chandra, Subodh Chandra, Prakash Wati and Vishwanath and one writ petition for two suits and four writ petitions against Sri Raghav Chandra. The petitioners have submitted that they were under the

impression that six court fees will suffice the interest of the entire defendants.

However, now separate writ petitions have been filed by the petitioner challenging the order passed by the Board of Revenue allowing the revision. The explanation given by the petitioners are sufficient in order to condone the delay in filing the present writ petitions in order to advance substantial justice between the parties.

I have recorded the findings given in the Writ Petition No. 4409 of 2001 and 2824 of 2001 to the following effect:-

“Learned counsel for the respondents has vehemently argued that since his Vakalatnama was already filed, therefore, ex parte order could not have been set aside.

Suffice it to state that revisional court while exercising the powers under Section 115 of the Code of Civil Procedure could not have interfered with the findings of fact recorded by the appellate court where the appellate court has set aside the order and the ex parte decree has been passed against the petitioner and without hearing them and in such a situation the appellate court was fully justified in giving an opportunity to the petitioners to contest the appeals on merits.

Learned counsel for the respondents has raised the objection that the affidavit is not in order.

I have pursued the affidavit and in my opinion there is no ambiguity in the affidavit. In the affidavit it has been stated that the deponent is Office Superintendent of alleged Sugar Cane Factory Limited, Pilibhit and is also pariokar of the present petitioners and has been mentioned its pairokar. Merely the writing its pairokar will not become the Sugar Cane Factory's Pairokar. It is clearly visible from the fact that he is mentioned that he is Office Superintendent of the alleged Sugarcane Factory and also the pairokar in the

present case and therefore, only by writing its pairkar will not be treated that the affidavit is not admissible in evidence.”

I, therefore, treat the present writ petitions having been filed against the order passed by the Board of Revenue, so far as the remaining suits are concerned, which were not covered in Writ Petitions No. 4409 and 2824 of 2001.

Counsel for the respondents Sri M.C. Pandey has submitted that the petitioners having not preferred the writ petition and therefore, the relief is barred in view of law laid down by the Apex Court in **Premier Tyres Limited Vs. Kerala State Road Transport Corporation AIR 1993 SC 1202** as well as **Ram Prakash Vs. Smt. Charan Kaur and another AIR 1997 SC 3760** and I have perused the aforesaid case. Relevant observation in the case of Premier Tyres Ltd. (supra) is quoted below:-

“The Court further held that where more than one suit were filed together and main issues were common and appeals were filed against the judgment and decree in all the suits and one appeal was dismissed either as barred by time or abated then the order operated as res judica in other appeals, ‘In the present case there were different suits from which different appeals had to be filed. The High Court’s decision in the two appeals arising from suits Nos. 77 and 91 was undoubtedly earlier and therefore, the condition that there should have been a decision in a former suit to give rise to res judicata in subsequent suit was satisfied in the present case..”

Relevant observation in the case of Ram Prakash (supra) is quoted below:-

“It would be obvious that since the claim of the petitioner and the respondents have arisen from the same cause of action and the finding of the appellate Court that damages had accrued to the respondents due to misfeasance or malfeasance having been allowed to become final, the decree which is subject-matter of the special leave petition

cannot be assailed. The self-same question was directly in issue and was the subject-matter of both the suits. The same having been allowed to become final, it cannot be gone into since the same had attained finality, the petitioner having not filed any appeal against the appeal dismissing the suit. In view of this situation, the High Court was right in concluding that the decree of dismissal of the suit against the petitioner would operate as res judicata under section 11, CPC in the appeal against which the petitioner has filed the second appeal.”

In the present case, as will appear from the facts available on the record that all the petitioners were vigilant of their rights and ten applications under Order 41 Rule 21 were preferred and thereafter, the respondent no. 5 has preferred ten revisions before the Board of Revenue.

All the petitioners, since, were vigilant and since writ petition filed by them were presumed to have been filed by all the petitioners as the defendant Raghav Chandra was the man in four suits. The explanation given by the petitioners, therefore, cannot be said to be irrelevant and in order to cover any lacuna, present writ petitions have been filed covering all the suits, appeals and revisions.

Further the order passed in Writ Petitions No. 2824 and 4409 of 2001 already been confirmed by the Apex Court, therefore, neither the question of res judicata will apply nor the waiver will apply in as much as the petitioners were proceeding in a lawful manner as the writ petitions have been filed covering all the suits. As held by the Apex Court that the primary functions of the court is to adjudicate the dispute between the parties and to advance substantial justice and further that the time 4 limit fixed for approaching the court in different situations is not caused on the expiry of such time, a bad cause would transform into a good cause. The petitioners having explained the same in their writ petitions, there cannot be any doubt that the petitioners aware about the legal rights for disposal of the applications under Order 41 Rule 21.

The need of society is that there should be justice-oriented approach and the matter should not be rejected only on the ground of technicalities. The Apex Court has held in **(2001) 8SCC 151, M.S. Grewal Vs. Deep Chand Sood** as under:-

“ Law Courts will lose their efficacy if they cannot possibly respond to the need of the society-technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice.”

In **N. Balakrishnan Vs. M. Krishnamurthy, 1998 S.C.F.B. and Rent Cases Pages 427**, It has been held that law of limitation is founded in public policy on ‘*the maxim of interest reipublicae up sit finis litium*’ i.e. for the general welfare, it has been held as under:-

“The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause”.

All the petitioners having preferred the application under Order 41 Rule 21 C.P.C., the appellate Court having recalled the orders and directed the appeals to be heard on merits. I see no justification to deprive them from the rights, which they have accrued by way of order passed on 14th August, 1989 for the fresh hearing of the appeal itself before the Commissioner.

Further Board of Revenue while allowing the revisions has observed that the defendant/respondent Raghav Chandra and others had full knowledge of the suits and the appeals, hence the applications were time barred and since no application for condonation of delay was moved, their

applications being barred by limitation are liable to be rejected.

The commissioner having observed that the appeals were heard ex parte and set aside the order and that has been done also in the spirit of Order 41 Rule 21 that if the petitioners satisfies the Court that the notice was not duly served, the Court may rehear the appeal in such terms, the same having been exercised by the Commissioner, I do not find that the Board of Revenue has any jurisdiction to allow the revision in a matter, where direction has been given for hearing the matter on merits.

The judgment of this Court in *Writ Petitions No. 4409 (ms) of 2001 Kr. Raghav Chandra Vs. The State of U.P. and 2824 (ms) of 2001 Kr. Mahesh Chandra and others Vs the State of U.P. and others* having been confirmed by the Apex Court, there is no reason that other appeals in which the application under Order 41 Rule 21 of the C.P.C. has already been filed and the same having been allowed, the same should not be allowed to be heard on merits.

It is well settled that the scope of revisional jurisdiction under Section 333 of the U.P. Z.A. & L.R. Act is limited to the extent of jurisdictional error alone. The appellate Court having allowed the applications under Order 41 Rule 21 C.P.C., it was not open for the revisional court to have allowed the revision so as to decline the parties from hearing on merits. The Apex Court in ***Lachman Dass Vs. Santosh Singh (1995) 4 SCC 201*** has held as under:-

“But in the case of revision whatever powers the revisional authority may have, it has no power to reassess and reappreciate the evidence unless the statute expressly

confers on it that power. That limitation is implicit in the concept of revision. In this view of the matter we are supported by a decision of this Court in State of Kerala v. K.M. Charia Abdullah and Co. AIR 1965 SC 1585.”

In the light of the Writ Petition No. 4409 and 2824 of 2001, a writ of certiorari is issued quashing the order dated 11.11.1991 passed by the Chief Revenue Commissioner.

The matter is remitted to the Commissioner for deciding the appeals after hearing both the parties in accordance with law within a period of four months from the date of production of the certified copy of the order.

In view of the above, review petition has become infructuous and is disposed of accordingly.

Writ petitions are allowed. No order as to costs.

(Rajesh Tandon, J.)

26.06.2006

Rathour